IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.77 OF 2006

1. Mr. Ashok Pundlik Nagare
2. Mr. Bapu Pundlik Nagare
3. Mr. Praveen Pundlik Nagare ....Applicants.

V/s

State of Maharashtra
Through Officer-in-charge,
Nandgaon Police Station,
Nandgaon, Dist. Nasik. ....Respondent.

Mr. R.B. Paranjape for the applicants.

Ms. Rajeshree M. Gadhavi, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 23rd January, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicants are arrested by Nandgaon Police Station, District Nashik in connection with the offence which is registered vide C.R. No.I-72 of 2005 and the said offence is punishable under section 302 read with section 34 of the Indian Penal Code.

3. The prosecution case is that the complainant filed the complaint on 2/10/2005 in which he alleged that on 27/9/2005 his brother was forcibly administered poison

by the applicant and this fact was told to him by his brother and, thereafter, he took his brother along with his cousin to the hospital where he died. A complaint was lodged on 2/10/2005 and, thereafter, the statements of other witnesses were recorded. on 3/10/2005.

4. It is submitted by the learned Counsel for the applicants that there is an unexplained delay in lodging the FIR and when the incident had taken place on 27/9/2005 and the brother of the complainant had died on the same day, there was no earthly reason to lodge a complaint on 2/10/2005. It is submitted that, admittedly, there is a dispute between the complainant and the applicants regarding the boundary of their agricultural fields and that taking advantage of the suicide which was committed by the deceased brother of the complainant, a false complaint has been lodged against the applicants.

5. The learned APP for the State, however, submitted that the post-mortem report clearly indicated that the deceased had died as a result of the poison which was administered to him and that the complainant had filed a complaint as he was making inquiries into the matter and that the delay of four days was not fatal. The

complaint was lodged after the obsequious ceremonies were performed by the complainant.

6. It is not possible to accept the submission of the learned APP appearing on behalf of the State. In my view, the applicants have made out a case of grant of bail. It appears that there was a boundary dispute of the agricultural fields between the applicants and the complainant. If the incident had taken place on 27/9/2005, there was no earthly reason why the complainant waited till 2/10/2005 to file the complaint particularly when his brother had died on the same day i.e. on 27/9/2005. The possibility of suicide as alleged by the learned Counsel for the applicants, therefore, cannot be ruled out. In this view of the matter, the applicants be released on bail in the sum of Rs 5000/- each with one or two sureties in the like amount each.

7. It is clarified that the Trial Court will not be influenced by the observations made by this Court while granting bail to the applicants and shall not consider it as an expression on merits of the case.

V.M. KANADE, J.